IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:16-00389-001
	)	
	)	
Plaintiff,	)	JUDGE JAMES GWIN
	)	
-vs-	)	
	)	
CONOR RANSOM,	)	DEFENDANT'S SENTENCING
	)	MEMORANDUM
Defendant.	)	
	)	

Now comes defendant, Conor Ransom, by and through his undersigned attorney, and respectfully presents this Court with a Sentencing Memorandum on behalf of the defendant. Although the final presentence report prepared by Pretrial Services accurately presents the background of the defendant and his actions for this Court's consideration, Ransom here argues that the sentence range does not comport with 18 U.S.C §3553(a) mandates. The resultant sentencing range under the USSG, lever 34 (151 to 188 months) is far greater than necessary to meet the purposes of a that statute.

In sum, Ransom has a Criminal History Category of 1. He also has numerous mental health issues, including sever depression. He is also on the autism spectrum, which, as argued below, has a significant relevance to his offense, but perhaps more significantly, to the guideline enhancements attached to the principle charges. Ransom is attaching relevant exhibits addressing this issue.

Ransom entered a guilty plea without a written plea agreement. It is understood that he is facing a mandatory minimum of five years. It is argued here that a sentence within the current guideline level would be disproportionate to his actions. A sentence of well-less than ten years would be appropriate and conform to §3553(a) requirements.

These issues will be addressed more fully in the attached Memorandum in Support.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2017, a copy of the foregoing was filed electronically. Parties may access this filing through the Court's system. Notice of this filing will be sent by operation of the Court's electronic filing system

S/ David L. Doughten
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Attorney for Defendant

MEMORANDUM IN SUPPORT

The defendant, Conor Ransom, entered a guilty plea to charges that he viewed visual depictions of real children in violation of 18 U.S.C. §2252(a)(2) and 18 U.S.C. §2252(b)(1). The facts are not disputed. What is disputed is the appropriate sentence that Ransom should serve as punishment for his offense. In view of his unique background, and mental infirmities suffered by Ransom, in particular his being on the autism scale, the guideline level pursuant to the USSG is inappropriate for this defendant.

Ransom has a Criminal History Category of 1. This is his first offense. As set forth in the Pre-sentence Investigation Report, the illegal activity began at the end of 2015 when Ransom first downloaded child porn. Soon thereafter he began to use a peer-to-peer browser, which he had originally obtained to locate pirated video games, to locate the pornography. (Doc. #15, PSI, PageID 74, Para. 8 and 9) Ransom explained that he at first viewed Japanese comic books online which depicted children. It was from these sites that he discovered actual child porn sites. He continued watching those cites, essentially out of boredom to fill time voids. (Id, PageID 75)

Specific Background Characteristics

Ransom is not married and has not fathered any children. This probably is the result of his mental health issues. He is a social loner. He keeps to himself, living with his mother. Ransom stated that he has not had any relationships with anyone. His last date was in high school in 2001.

Mr. Ransom grew up in Mentor, Willoughby, and Eastlake, Ohio. He was raised primarily by his mother, Kathy Ransom. His father developed ALS as a young man and was wheelchair bound for much of his adult life. He died in 2011. Mr. Ransom had a good relationship with his father, who could only communicate by blinking.

Ransom attended Shore Junior High in Mentor, Willoughby South High School, and graduated from Eastlake North High School in 2001. He then attempted to take a few courses at Lakeland Community College, but failed.

Ransom enlisted in the Army in 2002 but was discharged seven weeks later following a suicide attempt with an overdoes of pills. He was hospitalized for several weeks at Fort Jackson, South Carolina before being taken to Laurelwood Hospital in Willoughby, Ohio.

Work History

Ransom has a spotty work record, at best. He worked for one year at a gas station, two years at Sears, three years at Best Buy, one month at Target. His younger brother, Eugene Ransom, has been extremely helpful to Ransom, providing him with employment and assisting him in attending counseling sessions. Ransom eventually worked for his brother Eugene in Eugene's used car and auto mechanic business. He has developed a proficiency in this field. He performs some auto bodywork for Eugene, in addition to other duties, including driving to various junkyards to pick up auto parts for his brother.

Specific Mental Health History

Dr. James Eisenberg, Ph.D., a forensic psychologist, evaluated Ransom for competency. The request had been made because of Ransom's monotone affect and at times disjointed answers to questioning. After obtaining Ransom's medical records, Dr. Eisenberg opined that Ransom was competent, but discovered he did fall within the autism spectrum (AS).

Ransom enlisted in the army at age 19. Soon thereafter he attempted suicide by overdosing on pills, approximately one month later. (Doc. 15, PSI ¶ 47, PageID# 78) He was admitted into a hospital on the base at Fort Jackson, South Carolina for one month. The army sent him home to Mentor, Ohio. He was hospitalized in Laurelwood Treatment Center. He reported he tried to kill himself because he was distraught and depressed.

Since his release, Ransom has since been treated on numerous occasions with a diagnosis of generalized anxiety and a major depressive disorder. Approximately three years ago, Ransom again attempted suicide after his father's death. He was not hospitalized after this attempt. However, he did commence mental health treatment on a regular basis. He received this counseling from Beacon Health in Mentor, Ohio. As reported in the PSI, a psychologist and case manager came to his house twice monthly until about six months prior to the completion of the PSI. Ransom stopped with his counseling after he did not get along with a replacement therapist. (Doc. 15, PSI ¶ 50, PageID# 78)

After his arrest in this case, Ransom again was hospitalized as a preventative measure against suicide. At that time he received counseling for the child pornography issue. (Doc. 15, PSI ¶ 51, PageID# 78) He is currently taking drugs for his depression, specifically Escitalopram.

There was a suggestion of Asperger's noted in the Beacon Health treatment records of September, 2014. In December of 2014, both Mr. Ransom and his mother agreed that he met the criteria for the Asperger's Syndrome Disorder (ASD) (now classified under AS, Autism Spectrum). After the diagnosis, he did not receive counseling for AS. As noted in the records, he continued to stay at his mother's house. He had no relationships and preferred to be isolated, to the extent that he was urinating in bottles in his room and sleeping in piles of trash.

Ransom believes that he has suffered from this disorder (AS) from childhood. He believes that because of the disorder, he almost failed to make it through high school. Classroom studies frustrated him and he was disruptive. Fortunately, although he had not yet been diagnosed, he had a very understanding principal at his school. Whenever Ransom would become frustrated with the classroom, the principle instructed him to just come down to the office and sit to calm down. Ransom afforded himself of this privilege often. Therefore, he was able to avoid acting out and causing undue problems for himself and his class.

Prior to being evaluated by Dr. Eisenberg, he was most recently evaluated in June of 2016. At that time his cognitive functioning (IQ) was above average. As reported by Dr. Eisenberg, the resulting diagnostic impressions were as follows:

1. Pervasive Depressive Disorder, Early Onset, With Mood-Congruent Psychotic features, Severe

2. Generalized Anxiety Disorder

3. Alcohol Use Disorder

4. AD/HD Predominantly Inattentive Type

5. Autism Spectrum Disorder without Accompanying Intellectual Impairment

(Eisenberg Report, Exhibit 1)

Dr. Eisenberg made the following conclusions:

> Mr. Ransom was alert and fully oriented throughout the evaluation. He responded appropriately to questions. He was on medication (Lexapro) for his depression without any apparent side effects. His style of responding is limited to the questions asked, without affect or emotion. He is obviously an intelligent man. He is aware of his current legal situation yet responds concretely to questions about the possible consequences. There is simply no emotional investment.

The diagnostic impressions were as follows:

Autism Spectrum Disorder without Accompanying Intellectual Impairment (Primary Diagnosis)
Persistent Depression Disorder Pervasive Depressive Disorder
Generalized Anxiety Disorder
Alcohol Use Disorder

Dr. Eisenberg formed the opinion that Mr. Ransom met the criteria for the Autism Spectrum Disorder. Prior to the 2013 revision of the *Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-5),* he would have met the criteria for Asperger's (now subsumed under the Autism Spectrum). This finding was based largely on the fact that Ransom demonstrated persistent deficits in social communication and social interaction.

> He has not had a date or any other relationship since high school. He demonstrates repetitive patterns of behavior that would include his constant viewing of the same Internet websites. His behavior is bizarre. He prefers to stay in his room and urinate in bottles. His overall conduct is consistent with the features seen in this disorder (See *Autism Spectrum, Sexuality and The Law*, Jessica Kingsley Publishers, 2014).

The PSI substantiates this diagnosis and is well explained in the report. The summarization includes Ransom's preoccupation with death, poor impulse control, lack of confidence, an incapability of coping with current difficulties, being anger prone, losing control and a distrust of others. (Doc. 15, PSI ¶ 55-58, PageID# 78)

This reporting is consistent with his reported difficulties in school and otherwise. Adding to the frustration is that Ransom apparently also suffers from being dyslexic as a child. (Doc. 15, PSI ¶ 63, PageID# 78)

Connection of Autism and Child Porn

AS is defined in the DSM-IV is an "Autism Spectrum Disorder" typified by extreme social and emotional immaturity, the inability to "read" others or respond appropriately in social settings, lack of intuitive awareness of social/moral/legal constraints, and intense and narrowly directed repetitive activities. These features combine to create a risk of engaging in behavior offensive towards others but with no offensive purpose.

These individuals tend to have the technical skills for computer use, to which they gravitate because, unlike social interactions that are unpredictable, whimsical, and semantic-guided, computers are predictable, logical and syntax-guided. Those on the spectrum are intellectually intact people, with good computer skills but extraordinary brain-based naivete, acting in social isolation, compulsively pursuing interests which often unknowingly take them into forbidden territory. See also, Principles for Prosecutors Considering Child Pornography Charges Against People with Asberger Profiles, AANE (Asperger/Autism Network). www.aane.org/principles for prosecutors/.

It is under this backdrop that the appropriate sentence for Ransom must be considered. His activities in this case, admittedly criminal, should be viewed in light of his particular infirmities.

There is strong evidence that there is a connection between a person on the autism scale and child porn. Attached to this Sentencing Memorandum is an recent article on the subject, Downloading a Nightmare, *When autism, child pornography and the courts collide*. The Marshall Project (released June 1, 2017). The scenario reported in the article is very similar to Ransom's case. In fact, the Marshall Project interviewed many families whose autistic sons were caught up in child pornography investigations.

The article explains that people on the high-functioning end of the autism spectrum can have impressive cognitive abilities that mask areas of extreme deficit. "They might be intellectually adult, but socially childlike, hobbled by their inability to read emotion or understand non-verbal communication. They long for meaningful relationships but are routinely rejected because they are unable to navigate the intricate, invisible rules of social interaction. They are isolated and bullied in school." Downloading a Nightmare, p, 4.

The connection with the above aspects is that a great many people with high-functioning autism take refuge in computers, which allow them a way of approaching the world without discomfort and risk of face-to-face interaction. "And, they transfer to that computer the same naivete`, the same lack of street smarts and common sense, that the have in everyday life." This quote is attributed to Ami Klin, an nationally recognized autism clinician and researcher who heads Emory University's and Children's Healthcare of Atlanta's Marcus Autism Center.

The article acknowledges that 93% of adolescent boys are exposed to online pornography. The difference is that for a person on the autism spectrum, the online introduction to sexuality becomes the only source of information throughout adolescence and well into adulthood. As they become more isolated socially, the time spent online, where child pornography is located, grows. Downloading a Nightmare, p, 4.

The article points out that the escalating punishments for downloading child pornography are fueled, at least partially, by the belief that someone viewing child pornography is capable of child abuse themselves. [1] However, people on the autism spectrum lack the ability to "groom" a child for abuse. Indeed, those on the spectrum are more likely to be victims themselves. Downloading a Nightmare, p, 5.

The key part of the article may be the following;

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[1] It is understood that sever punishment is also based upon the need to not perpetuate the child pornography industry.

> The line between legal and illegal in the world of online pornography may be especially blurry for someone without an inherent understanding of social mores and taboos. Some pursue their curiosity well beyond that line, viewing and downloading thousands of images of children - many them prepubescent, some much younger. *Until it is clearly explained to them, clinicians say, many cannot fathom what most people intuit: that the children in pictures and videos are the victims of horrific abuse.*

Downloading a Nightmare, p, 5. (Emphasis added)

This explanation fits Ransom. Because of his difficulties, he was socially isolated early in life. He did not develop social skills necessary to develop a full understanding of appropriate social mores and taboos. As Ransom reported, he became a bit of a hermit, living in his room, with his only company being his computer.

The study of the connection of autism and child pornography is in its relative infancy. However, the understanding that there is a connection is not new. An example of the recognition of the problem in the psychology mainstream is an article appearing in Psychology Today, Autism and Porn: A Problem No One Talks About, posted on August 6, 2013. The reasons are summarized here as follows:

Reason 1: Developmental delay may align young adults with kids. It is explained that because of autism, there are often developmental delays. Because of these delays, some autistic people look at younger kids as peers. A person with autistic challenges may not intuitively understand the full risks or the moral issues of his actions. This is particularly so if the person suffering from autism were never "taught the rules."

Reason 2: Weak theory of mind can make it hard to know right from wrong. This is based on the rationale that if you are blind to emotional signals of others, it is hard to develop a sense of what is and is not socially acceptable.

Reason 3: Neurological vulnerability. It is known that people with autism have greater-than-normal plasticity, which makes them more "changeable" than those not on the spectrum. It can make one more sensitive to change in response to stimulus. Viewing porn -neurologically speaking - can take the place of sex, even for people with physical relationships. For an autistic person who cannot form relationships in real life, porn can easily become more compelling than the desire to be with a real-life girlfriend.

This is not to argue that punishment is not appropriate in this case, or even severe punishment. But double or almost triple the mandatory minimum of five years would be in violation of the principle of not punishing him more than necessary under §3553(a). It seems that Ransom would be more amenable to counseling than one not on the AS. His recidivism rate would likely be far less than another without his disabilities. (See www.psychologytoday.com/blog/my-life-aspergers/201308/autism-and-porn-problems-no-one-talks-about).

Ransom's Objections to Pre-Sentence Investigation Report

There are two objections to the guidelines calculations. The Sixth Circuit has in the past rejected these arguments. However, Ransom believes that the arguments for the objects are pertinent to this Court's consideration of the appropriate sentence, in addition to preserving the matter for Sixth Circuit reconsideration. These are as follows:

1. Para. 19 USSG §2G2.2(b)(3)(F)

Ransom objects to the two-level raise for distribution pursuant to USSG §2G2.2(b)(3)(F). This constitutes double counting. Counsel acknowledges that the current Sixth Circuit case law is contrary to his position. Nevertheless, Ransom objects as he did not knowingly engage in distribution. His acknowledgment that he used a file sharing program (¶14) is covered in the offense to which he plead. That he failed to block the sharing aspect of his computer, allowing an investigating agent to download pictures, is insufficient to meet the requirements of USSG §2G2.2(b)(3)(F). Note 2 of the Guideline reads:

> 2. Application of Subsection (b)(3)(F). For purposes of subsection (b)(3)(F), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

This did not occur here. He was an “end user” and not a trafficker. See United States v Farrelly (2004, CA6 Ky) 389 F3d 649; United States v Dodds (2003, CA11 Ala) 347 F3d 893.

2. Para. 21 §2G2.2(b)(6)

It is understood that the Sixth Circuit has not found that the application of USSG §2G2.2(b)(6) to an offense of 18USC §2252(a)(2) and (b)(1) do not constitute double counting for an enhance of using a computer. United States v. Walters, 775 F.3d 778 (6th Cir.2015). “Double counting occurs when precisely the same aspect of a defendant's conduct factors into his sentence in two separate ways.” United States v. Walters, 775 F.3d at 782 (internal quotation marks removed). “[N]o double counting occurs if the defendant is being punished for distinct aspects of his conduct.” United States v. Battaglia, 624 F.3d 348, 351 (6th Cir. 2010). Double counting is permitted where “it appears that Congress or the Sentencing Commission intended to attach multiple penalties to the same conduct." Id. Ransom nonetheless objects to preserve this issue for a possible appeal.

Double counting "occurs when 'precisely the same aspect of a defendant's conduct factors into his sentence in two separate ways." United States v. Wheeler, 330 F.3d 407, 413 (6th Cir. 2003) (quoting United States v. Farrow, 198 F.3d 179, 193 (6th Cir. 1999)). "[N]o double counting occurs if the defendant is punished for distinct aspects of his conduct." Battaglia, 624 F.3d at 351 (*citing* United States v. Moon, 513 F.3d 527, 542 (6th Cir. 2008)). Where double counting does occur, however, it may be permissible. Id. Where it "appears that Congress or the Sentencing Commission intended to attach multiple penalties to the same conduct," double counting is permitted. Id. (quoting Farrow, 198 F.3d at 194).

Here, Ransom's exact same conduct that formed the basis of the offense formed the basis of the two-level enhancement pursuant to §2G2.2(b)(6). Subsection (F) duplicates the "distribution" element of his conviction under § 2252(a)(2) and therefore constitutes impermissible double counting. Subsections (A) through (E) articulate actions that aggravate a typical case of distribution. Subsections (A) and (B) draw a distinction between distribution alone and distribution for the purposes of a quid pro quo; subsections (C), (D), and (E) apply increases for distribution to a minor. By contrast, subsection (F) adds a two-level enhancement "solely for committing the act." This unjustly punishes Ransom twice for the same conduct: once as an element of the offense, and again as an enhancement to the offense.

When the guidelines were effectuated, child pornography, as well as pornography in general, were generally found and distributed in paper documents, primarily undergrown magazines. Currently, one would venture to guess that almost no federal child pornography cases are based upon a defendant's purchase of paper materials. This would be particularly true in the case of the guideline enhancements based upon the number of images viewed here. One cannot imagine the size of a library needed to contain 2500 images.

United States v. Walters Dissent is Applicable Consideration

In determining the appropriate sentence for Ransom, it is requested that this Court consider the dissent in United States v. Walters, supra. Judge Merritt is despondent about the "vast over-criminalization" of the wrong involved in child-pornography cases. The sentence in Walters, as the guideline-level here, was "vastly disproportionate to the crime." Id, at 788.

In Walters, as in Ransom's case, what the defendant did is to look at photographs that we would find disgusting and criminally produced. Judge Merritt pointed out that to say that the defendant "caused" the production of the photos fabricates "causation." It is a rationalization arising from, in his view, "our disgust and disapproval."

Judge Merritt noted that many of the groups of officials and experts who have looked into the problem of Internet child porn have reached the conclusion that the sentencing guidelines that the district courts and circuit courts have enforced should be greatly reduced. Most importantly, these groups include the Sentencing Commission itself, which has conducted an extensive study and then issued a 350 page Report in 2012 entitled "Federal Child Pornography Offenses" [available at: http://www.ussc.gov/news/congressional-testimony-and-reports/sex-offense-topics/report-congress-federal-child-pornography-offenses]. The Report asks Congress to remove the harsh Protect Act provisions that ordered the Sentencing Commission in 2003 to write guidelines recommending to judges the imposition of sentences such as the 12-plus year sentence in this case. The report is based in part on the refusal of a sizeable majority of judges to follow the guidelines and the opinion of experts in the field, including psychologists, medical experts and legal scholars who have studied the problem.

The Commission's study arrived at the conclusion that the present child porn guidelines have “no rational basis,” are “outmoded,” do not “distinguish adequately among offenders based on their degrees of culpability,” and have "enhancements,” like the ones in this case, that are “outmoded and disproportionate.” The disagreement with the guidelines for non-production offenders is widespread. Walters at 788.

The Report at page xxi concludes in part:

> Numerous stakeholders—including the Department of Justice, the Federal Defender community, and the Criminal Law Committee of the Judicial Conference of the United States—have urged the Commission and Congress to revise the nonproduction sentencing scheme to better reflect the growing body of knowledge about offense and offender characteristics and to better account for offenders' varying degrees of culpability and dangerousness.

This argument fits Ransom’s case perfectly. But the Walters defendant did not have a similar background to Ransom, in particular the mental infirmities suffered by Ransom. A sentence of twelve years here would be more of an injustice. And, as has been addressed above, Ransom has considerably more factors calling for a sentence far less than suggested by the guidelines.

Guidelines Considerations

It is well-settled that the USSG are not binding on this Court. In United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), the Supreme Court invalidated the mandatory use of the Sentencing Guidelines and declared them "effectively advisory." The Sixth Circuit has stated that "once the appropriate advisory Guideline range is calculated, the district court throws this ingredient into the section 3553(a) mix." United States v. McBride, 434 F.3d 470 (6th Cir. 2006).

The §3553(a) factors include the nature and circumstances of the offense and history and characteristics of the defendant, the need for the sentence imposed, the kinds of sentences available, the kinds of sentence and sentencing range established for the defendant, pertinent policy statements, the need to avoid unwarranted sentencing disparities among similarly situated defendants, and the need to provide restitution. 18 U.S.C. § 3553(a)(1)-(7) Although Booker, held that the Sentencing Guidelines are not mandatory, sentencing courts must determine whether a specific element of the Sentencing Guidelines applies because a district court must still consider the Guidelines when imposing "a sentence sufficient, but not greater than necessary, to comply with the purposes" of section 3553(a). 18 U.S.C. § 3553(a); See United States v. Webb, 403 F.3d 373, 383-84 (6th Cir. 2005).

A judge sentencing a federal offender must impose at least one of the following sanctions: imprisonment (often followed by supervised release), probation, or a fine. See §3551(b). In determining the appropriate sentence from among these options, §3553(a)(2) requires the judge to consider specified factors, including:

"the need for the sentence imposed --

A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

B) to afford adequate deterrence to criminal conduct;

C) to protect the public from further crimes of the defendant; and

D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner."

These four considerations -- retribution, deterrence, incapacitation, and rehabilitation -- are the four purposes of sentencing generally, and a court must fashion a sentence "to achieve the purposes . . . to the extent that they are applicable" in a given case. § 3551(a).

Tapia v. United States, 131 S.Ct. 2382 (2011).

Summary

In considering the above guidelines here, it is clear that the need to protect the public is minimal. The circumstances in this case are unlikely to reoccur as Ransom would be amenable to treatment. Ransom's autism was not diagnosed until relatively recently. He was therefore not counseled at any time in his childhood or his teenage years. He never developed social skills that would allow him to live outside his mother's home for any significant period of time.

Lonely and isolated, he turned to the computer for company and relief for his sexuality, which had not developed normally. It was almost inevitable that his watching of pornography would lead to curiosity in child porn. Having not developed or understood the social problems associated with child pornography, Ransom continued to explore this on his computer.

He did not make any purposeful intent to distribute. Because of his social difficulties, controlling his access to computers would seem to be a easily accomplished condition of his release. Serving at least five years for his conduct would seem to enforce the prohibition, particularly with one with logic base social morals. It should also be noted that he has been on bond since his guilty plea, meeting every condition.

In addition, this is Ransom's first offense at the age of 34 years of age. He suffered from severe depression throughout much of his life. He has made at least two legitimate suicide attempts. This depression, exacerbated by his father's suffering and death, likely contributed to his isolation.

It is argued here that a sentence of the five year mandatory minimum would be would be appropriate as he would serve to a term of incarceration. Ransom's unique characteristics would render a guidelines range sentence to be inappropriate and in violation of the Eighth Amendment of the United States Constitution.

Respectfully submitted,

S/ David L. Doughten
David L. Doughten

Counsel for Defendant